

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

W.R. GRACE & CO., *et al.*,

Debtors.

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Chapter 11

Case No. 01-01139 (JKF)

Jointly Administered

Related to Docket No. 20622, 21403

**PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF
INSURANCE AND CERTAIN OTHER CONFIRMATION DISCOVERY**

WHEREAS, W.R. Grace & Co., et al. (collectively, the “**Debtors**”), the Official Committee of Asbestos Personal Injury Claimants, the Asbestos PI Future Claimants’ Representative,¹ and the Official Committee of Equity Security Holders (collectively, the “**Plan Proponents**”), have filed the First Amended Joint Plan of Reorganization (the “**Plan**,” as it may be amended, supplemented, or otherwise modified from time to time) in the Bankruptcy Court for confirmation pursuant to Bankruptcy Code §§ 524(g) and 1129 (“**Plan Confirmation**”);

WHEREAS, certain parties identified on Appendix A hereto (the “**Objectors**”) have filed preliminary objections to confirmation of the Plan or have served discovery on the Plan Proponents;

WHEREAS, discovery requests have been and may continue to be served on the Plan Proponents, the Objectors and certain of the Debtors’ insurers and others (collectively, the “**Parties**”) in connection with Plan Confirmation (collectively, the “**Confirmation Discovery**”);

WHEREAS, the Parties desire to protect the confidentiality and limit the use of certain documents and information that may contain, among other things, medical, trade, financial,

¹ All terms not otherwise defined herein shall have the same meaning as in the Plan.

business and/or litigation information that may be of a confidential and/or proprietary nature deserving of protection (the “**Confidential Information**”)(including, but not limited to, settlement agreements among the Debtors and various insurers, correspondence between Debtors and various claimants about their claims; insurance policies; and other materials)² while ensuring that the Parties can obtain discovery with a minimum of delay and expense;

Accordingly, upon the agreement of the Parties:

1. All Confidential Information furnished, disclosed, or made known in response to the Confirmation Discovery, (1) including in written form, orally or through any electronic, facsimile or computer-related communication, (2) and whether intentionally or unintentionally, shall be used by the Parties and their Permitted Recipients (as defined in paragraph 2 below) solely and exclusively in connection with Plan Confirmation, shall be kept confidential by such Parties and their Permitted Recipients, and shall not, without the prior written consent of each Designating Party (as defined in Paragraph 5 below), be disclosed, distributed, published or otherwise made available by the Parties or their Permitted Recipients to any other person or entity, *provided, however*, that in accordance with paragraph 14 below, this Protective Order shall be without prejudice to any Party’s right to seek production of Confidential Information through subsequent discovery in any coverage, tort or other action. Confidential Information produced in the course of Confirmation Discovery shall not be utilized for any other purpose or proceeding.

2. Notwithstanding paragraph 1 above, any Party may disclose the Confidential Information to such Party’s counsel (which, for the avoidance of doubt, includes counsel who

² This Protective Order does not address medical information related to the Libby claimants’ objections to the Plan, including medical information of Libby claimants or any reliance materials of the Libby claimants’ experts.

represent members of any official creditors' committee), consultants, accountants, experts, auditors, examiners, insurers, reinsurers or financial advisors or any other agents or professionals who are working for any Party in connection with Plan Confirmation. In each case, the foregoing must have a need to know such information and if applicable, have furnished such acknowledgement of this Protective Order as provided for in the last sentence of this paragraph ("Permitted Recipients"), *except* that counsel to any Party (including counsel who represent members of any official creditors' committee) shall be deemed to have accepted the terms of this Protective Order need not execute an acknowledgement, and may supply Confidential Information to other Permitted Recipients subject to the following two sentences. Unless the disclosure of information is required by law, court order or prior contract, each Party or Party's counsel providing Confidential Information to a Permitted Recipient shall advise, in writing, such Permitted Recipient (i) of the terms of this Protective Order, (ii) that upon receipt of any Confidential Information such person shall be deemed bound by the terms of this Protective Order, and (iii) of such person's obligations concerning the confidentiality of all such Confidential Information and the proper use thereof. Prior to receiving any Confidential Information, each Permitted Recipient shall execute an acknowledgement, in the form attached as Exhibit A to this Protective Order, indicating that he or she has read this Protective Order and agrees to be bound by its terms; and the original executed acknowledgements for each Party's Permitted Recipients shall be retained by such Party or such Party's counsel until two years after the date discussed in paragraph 21 below).

3. Notwithstanding anything to the contrary in this Protective Order, "Confidential Information" shall not include any information or portions of information (including information that otherwise would constitute Confidential Information) that: (a) is or becomes generally

available to the public other than through actions by a non-Producing Party; (b) is or becomes available to a Party on a non-confidential basis from a source, other than from the Plan Proponents or Objectors, that the Party seeking to disclose such information believes, after reasonable inquiry (including of the Plan Proponents and Objectors), is not prohibited from disclosing such information to another party by a contractual, legal or fiduciary obligation; (c) is or has been directly included in a filing with the Bankruptcy Court, any other court, or any administrative body or tribunal whose records are open to public inspections, except such information as has been filed under seal and except for any filing made in violation of this Protective Order or any other protective order or confidentiality agreement; or (d) can be demonstrated by evidence was in the possession of the Party seeking to disclose the information prior to being produced to such Party through Confirmation Discovery and was not otherwise subject to any contractual, legal or fiduciary obligation of confidentiality.

4. The Parties shall designate a document as Confidential Information by placing on the face of the document the notation **“CONFIDENTIAL SUBJECT TO APRIL 2009 PROTECTIVE ORDER.”**

5. At the same time as or prior to producing written Confidential Information in the course of Confirmation Discovery, or within three (3) days of disclosure of Oral Confidential Information (as defined below) or other non-written Confidential Information in the course of Confirmation Discovery, a Party shall designate any materials, documents or writings which are intended to be subject to this Protective Order. **“Oral Confidential Information”** shall mean: any written Confidential Information that is discussed or presented orally. Within a reasonable time after receiving such written or non-written materials produced in the course of Confirmation Discovery, any Party with a legitimate interest in the confidentiality thereof may designate such

materials as Confidential Information. Any such Party, or any Party who produces Confidential Information in the course of Confirmation Discovery, and in either case has timely designated such material as Confidential Information is referred to herein as a "Designating Party." The Parties shall use reasonable efforts not to designate publicly available or other non-confidential and non-proprietary information as "Confidential Information" or Oral Confidential Information. Any dispute over whether any particular materials constitute Confidential Information or whether a Party is not a proper Designating Party shall be resolved by order of this Court, and pending entry of any such order, any materials designated by any Party as Confidential Information shall be treated as such.

6. Confidential Information also may be disclosed by a Party if it becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to do so. In the event that such disclosure is sought, the Party against whom the demand is made shall use reasonable efforts to provide the Designating Party with prompt written notice of the order or other process compelling the disclosure of the Confidential Information, which notice must be received by the designating Party and its counsel not less than fifteen (15) business days prior to such disclosure, so that the designating Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Protective Order with respect to the proposed disclosure. If a protective order or other remedy is not obtained by the time a Party is required to comply with such disclosure requests, and the Party is advised to do so by in-house or outside counsel, the Party may comply with such requests, *provided that* the Party uses reasonable efforts to disclose only such limited portion of the Confidential Information as is covered by such request.

7. Without limiting the generality of any provision of this Protective Order, if a Party determines that it is necessary to disclose or to make reference to Confidential Information in a motion, pleading or other document filed with the Bankruptcy Court in connection with Plan Confirmation (a "**Filing**"), such Party, if permitted by the Court, shall file the Confidential Information in a sealed envelope or container on which shall be endorsed the name and case number of the above-captioned Chapter 11 Cases, the title or a general description of the envelope's or container's contents, and a statement in the following form:

Filed Under Seal Pursuant to April 2009 Protective Order: This envelope [or container] is sealed pursuant to an order of this Court, and contains Confidential Information filed by [name of Party] and is not to be opened or the contents thereof displayed or revealed except by order of this Court or pursuant to a written agreement by and among the Parties to that certain April 2009 Protective Order.

Such envelope or container shall not be opened without further order of this Court or written agreement by and among the Parties. If a filing is made under seal pursuant to this paragraph 7, the Party making the filing may, at its election, file a publicly redacted version of such filing, omitting the part thereof that discloses or reveals the contents of the Confidential Information. Each Party to this Protective Order shall receive copies of both the redacted and unredacted filings, and for the avoidance of doubt, may share the unredacted copies with each Party's Permitted Recipients in accordance with paragraph 2 above.

8. Confidential Information shall not be disclosed to any person that is not permitted to receive or have access to Confidential Information under this Protective Order absent court order or the express written consent of the Party or Parties that produced the Confidential Information and/or designated such information as Confidential Information. If a Party seeks a protective order or other remedy in accordance with this Protective Order, the Party agrees that it

will use best efforts not disclose Confidential Information until the matter has been resolved by the Bankruptcy Court or other court of competent jurisdiction.

9. In the event any party wishes to use or refer to Confidential Information at a deposition in connection with Plan Confirmation, any Party may compel all persons other than the deponent, court reporter, and other parties already permitted access to the Confidential Information to be excused from the deposition during the time that the Confidential Information is being disclosed or discussed. Any deposition transcript containing Confidential Information shall also be designated confidential and the portions thereof containing such Confidential Information shall be subject to the provisions of this Protective Order.

10. Before the Confirmation Hearing or any hearing in open court in connection with Plan Confirmation, the Parties shall negotiate in good faith with each other to seek agreement on the handling of Confidential Information so as to provide protection against public disclosure of such Confidential Information. If no agreement is reached, the Parties shall submit alternate proposals to the Bankruptcy Court for consideration and determination prior to trial, argument or hearing.

11. The Debtors authorize insurers that have entered into Asbestos Insurance Settlement Agreements with the Debtors to produce such agreements under the terms of this Protective Order.

12. It is agreed that no failure or delay by any Party in exercising any right, power or privilege hereunder following entry into this Protective Order shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege hereunder.

13. Nothing contained herein shall restrict the use by any Party of Confidential Information produced by such Party, other than Confidential Information first obtained by such Party subject to this Protective Order or any other obligation of confidentiality.

14. Nothing contained herein shall limit or preclude any Party from raising objections to the production or disclosure of information or documents.

15. Nothing contained herein shall prohibit any person from requesting the production or disclosure of information or documents in accordance with the Federal Rules of Civil Procedure, *provided, however*, that (a) this Protective Order shall apply with respect to any such production or disclosure in connection with Plan Confirmation, and (b) no such request may contain any disclosure of Confidential Information other than as permitted by this Protective Order. The rights of any persons to oppose or seek a protective order concerning any such discovery are also unaffected by this Protective Order. Further, nothing contained herein shall prohibit any Party from seeking relief in the Bankruptcy Court and/or from raising objections to the designation of documents as Confidential Information in the Chapter 11 Cases.

16. United States securities laws may prohibit certain persons who have material nonpublic information concerning a company from purchasing or selling securities of such company, or from communicating such confidential information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell securities. No Party shall use any Confidential Information in contravention of the Securities and Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the “1934 Act”), including Rule 10b-5 under the 1934 Act. By reason of the Objectors’ receipt of the Confidential Information, the Objectors may become subject to a prohibition or other limitation on the purchase or sale of securities of the Debtors, provided,

however, any such prohibitions, if any, shall apply only to those individuals with knowledge of the information and shall not be generally imputed to any entity.

17. No Party or its Permitted Recipients (a) shall be deemed by reason of this Protective Order to make any representation or warranty as to the accuracy or completeness of any Confidential Information or (b) shall have any liability to any other Party resulting from the use of the Confidential Information by them in accordance with the terms of this Protective Order.

18. Any person who hereafter becomes an Objector or Plan Proponent, against whom Confirmation Discovery is directed shall, upon notice via email to all existing Parties, be added to Appendix A of this Protective Order and receive access to Confidential Information, unless any existing Party objects by reply email within three business days of receiving such notice. If an existing Party so objects, the person seeking to become a party may apply to the Court for an order specifying whether or to what extent it may receive Confidential Information, *provided, however*, that any existing Party hereto may oppose any such application, and in all events the use of Confidential Information shall be subject to all other provisions of this Protective Order.

19. The term "person," as used in this Protective Order, shall be interpreted broadly to include, but is not limited to, any corporation, company, limited liability company, partnership, joint venture, union, government agency, political subdivision or individual.

20. Within ninety (90) days after the earlier of (a) a plan of reorganization for the Debtors is confirmed and any appellate proceedings with respect to confirmation of such plan have concluded and (b) the closing of these Chapter 11 Cases, all persons who received access to the Confidential Information must destroy all documents or materials containing Confidential Information, including all copies, extracts, notes and summaries made or containing information

therefrom, and certify in writing to each Designating Party that this has been done, *provided, however*, that the destruction and certification requirements of this paragraph 19 shall not apply to (v) copies of Confidential Information retained by a Party with a legitimate business purpose for retaining such material, (w) copies of Filings placed under seal with the Court pursuant to paragraph 7 above, (x) copies of Confidential Information that any Party is required by law to retain (e.g. for audit purposes) or (y) original documents or materials, the return of which is governed by paragraph 22 below, or (z) copies in the hands of the producing party that were not received from any other Party subject to this Protective Order. This paragraph shall not relieve a producing party of any obligation that a producing party may otherwise have to retain and not destroy documents.

21. Any original documents or materials (distinct from copies) that have been produced or turned over to any of the Parties shall be promptly returned to their owners or to the Person from whom they were received within ninety (90) days after the earlier of (a) a plan of reorganization for the Debtors is confirmed and any appellate proceedings with respect to confirmation of such plan have concluded and (b) the closing of these Chapter 11 Cases.

22. Notwithstanding the destruction or return of all Confidential Information, the Parties will continue to be bound by their obligations of confidentiality pursuant to this Protective Order. Without limiting the generality of the foregoing, neither the closing of the Chapter 11 Cases nor the termination of employment of any individual who has access to Confidential Information shall relieve such individual from his or her obligations of confidentiality pursuant to this Protective Order.

23. The Parties acknowledge and agree that money damages would not be a sufficient remedy for any breach of this Protective Order. Accordingly, in addition to any other remedies

to which they may be entitled at law or in-equity, any Designating Party who has designated information as Confidential Information shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any breach of this Protective Order (regardless of whether damages may or may not be readily quantifiable and without posting a bond or other security).

24. This Protective Order shall be governed by, and construed in accordance with, the laws of the State of Delaware without giving effect to the otherwise applicable principles of law as to conflicts or choice of law of such state.

25. The Bankruptcy Court shall have exclusive jurisdiction with respect to any issues, actions, suits or proceedings arising out of or relating to this Protective Order during such time as any of the Debtors shall be subject to the jurisdiction of the Bankruptcy Court. Any objection to the laying of venue in the Bankruptcy Court with respect to any action, suit or proceeding arising out of this Protective Order during such time are hereby overruled. Any notice, service of process, summons, or other document or communication required or permitted pursuant to this Protective Order shall be in writing and shall become effective service of process for any action, suit or proceeding brought against the Party in any court when delivered by facsimile (confirmed by mail), overnight courier service, registered or certified mail (postage prepaid) or by hand delivery to counsel for the Parties.

26. This Protective Order shall be binding upon and inure to the benefit of the Parties hereto, their respective counsel, advisors, representatives, employees, consultants, accountants, experts, auditors, examiners, financial advisors, or other agents or professionals, and each of their respective successors and assigns, and also to the benefit of any person whose Medical Information is produced in the course of Confirmation Discovery.

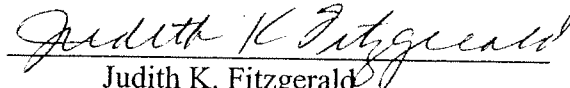
27. This Protective Order represents the entire order with respect to the subject matter hereof, *provided, however*, that this Protective Order shall in no way amend, modify, supersede, or extinguish any of the protective orders or confidentiality agreements that are in effect in these Chapter 11 Cases (collectively, “**Previously-Entered Protective Orders and Agreements**”), and the terms of such Previously-Entered Protective Orders and Agreements shall remain in full force and effect. Such Previously-Entered Protective Orders and Agreements include, without limitation, the following:

- (i) Protective Order Relating to Production of Medical Records, dated June 5, 2006 (Docket No. 12608);
- (ii) Order Regarding Motions to Compel Claimants to Respond to the W.R. Grace & Co. Asbestos Personal Injury Questionnaire, dated December 22, 2006 (Docket No. 14149);
- (iii) Modified Order Establishing the Non-Waiver of Privilege Contained in Answers to the Debtors’ Interrogatories and the Sealing and Confidentiality of Such Answers, dated July 10, 2007 (Docket No. 16259);
- (iv) Protective Order (re Claims Resolution Management Corporation) dated July 10, 2007 (Docket No. 16258);
- (v) Consent Order Concerning Confidentiality of Documents and Information to Be Produced by Expert Witnesses for Future Claimants’ Representative, dated September 13, 2007 (Docket No. 16820);
- (vi) Protective Order (re Claims Processing Facility, Inc.) dated September 17, 2007 (Docket No. 16826);
- (vii) Agreed Supplemental Order Regarding Modified Order Establishing the Non-Waiver of Privilege Contained in Answers to the Debtors’ Interrogatories and the Sealing and Confidentiality of such Answers, dated September 24, 2007 (Docket No. 16918);
- (viii) Protective Order Regarding Confidential Information, dated December 17, 2008 (Docket No. 20286); and
- (ix) Protective Order Regarding Confidential Information, dated December 17, 2008 (Docket No. 20287).

- A party's consent to this Protective Order does not constitute consent to the Previously-Entered Protective Orders and Agreements or waiver of the pending *Motion to Strike Whitehouse Expert Report or, Alternatively, Compel The Production of Documents and Databases on which he relies and for Entry of Confidentiality Order* (Docket No. 21245) or the objections asserted in connection therewith.

28. Any amendment, supplement or modification to this Protective Order, or any waiver of the rights and obligations hereunder, must be in writing and signed on behalf of the Parties hereto.

May 14
Dated: ~~April~~ __, 2009


Judith K. Fitzgerald
United States Bankruptcy Judge

APPENDIX A

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ACKNOWLEDGEMENT OF PROTECTIVE ORDER

_____, being first duly sworn, deposes and states as follows:

1. I am an adult and competent to give this Acknowledgement.
2. I have read and understand the terms of the *Protective Order Regarding Confidentiality of Insurance and Certain Other Confirmation Discovery* ("April 2009 Protective Order"), which was entered in the W. R. Grace & Co. bankruptcy cases (jointly administered as Case No. 01-01139 (JKF)) on April __, 2009 (Docket No. _____), and I understand my obligations thereunder.
3. I agree not to disclose, make available, communicate or use any Confidential Information other than as permitted in Paragraph 2 of the April 2009 Protective Order; and I shall otherwise comply and act in accordance with the Protective Order as it applies to me.
4. I further agree that within ninety (90) days after the earlier of: (a) a plan of reorganization for the Debtors is confirmed and any appellate proceedings with respect to confirmation of such plan have concluded and (b) the Chapter 11 cases are closed, I shall either destroy or return all Confidential materials (and copies thereof) that are then in my custody, or the custody of clerical personnel directly employed or retained by me in connection with this case, to each Designating Party's counsel, and certify in writing to such counsel that this has been done, as provided in Paragraph 20 of the April 2009 Protective Order.

Dated this _____ day of _____, _____.

SUBSCRIBED AND SWORN
TO BEFORE ME this _____
day of _____, 2009

Notary Public

My Commission Expires:

Signature

Printed Name

By: _____